

Decision 03-01-030 January 16, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U 39 M) for an Order Either (1) Confirming that PG&E May Grant a License Pursuant to General Order 69-C to the California Department of Transportation for a Structure Foundation Investigation on PG&E Property; (2) Exempting PG&E from the Requirement of Prior Commission Approval Pursuant to Public Utilities Code Section 853(b); or (3) Authorizing PG&E Under Public Utilities Code Section 851 to Grant the Proposed License to CalTrans.

Application 02-11-010  
(Filed November 5, 2002)

**OPINION CONFIRMING THAT PG&E MAY GRANT A LICENSE  
PURSUANT TO GENERAL ORDER 69-C TO THE CALIFORNIA  
DEPARTMENT OF TRANSPORTATION FOR A STRUCTURE FOUNDATION  
INVESTIGATION ON PG&E PROPERTY AND DISMISSING APPLICATION**

**Summary**

In this decision, we confirm that Pacific Gas and Electric Company (PG&E) may enter a license agreement with the California Department of Transportation (CalTrans), which permits Caltrans to conduct a structure foundation investigation on PG&E property located in Shasta County, pursuant to General Order (G.O.) 69-C, without prior Commission approval. We therefore dismiss PG&E's application because under G.O. 69-C, the Commission need not consider the application further.

## **Background**

On October 24, 2002, Pacific Gas and Electric Company (PG&E) filed this application seeking authorization to enter into a license agreement with the California Department of Transportation (CalTrans), so that CalTrans may conduct a building structure foundation investigation on PG&E property, commonly known as Lake Britton, in Shasta County.<sup>1</sup> CalTrans is conducting this structure foundation investigation in order to determine the location for a new bridge at Lake Britton. The bridge currently serving this area is in a state of severe structural fatigue and is subject to restrictive vehicle weight limits. A new bridge is therefore needed in order to better serve vehicular traffic in the area.

---

<sup>1</sup> We note that PG&E requested expedited review of this application and the issuance of a proposed decision within a few weeks after its filing. While we wish to be responsive to the needs of PG&E and third parties, PG&E has requested expedited treatment of a number of its Section 851 applications in the past six (6) months. These applications have often not been filed sufficiently in advance to allow for a 30-day protest period pursuant to Rule 44.1 or to allow a reasonable period of time for environmental review and issuance of a proposed decision by the Commission. In some cases, PG&E has also filed incomplete applications. PG&E is therefore reminded to file complete applications sufficiently in advance to allow adequate time for the Commission review and processing. Requests for expedited treatment of an application are appropriate only if accelerated processing is necessary to prevent substantial harm or disadvantage to PG&E or third parties, and PG&E did not have notice of or could not have reasonably foreseen these circumstances.

PG&E has requested confirmation that it may enter into the license agreement with Caltrans pursuant General Order (G.O.) 69-C.<sup>2</sup> In the alternative, PG&E seeks an order exempting it from the requirement for prior Commission approval pursuant to Pub. Util. Code Section 853(b),<sup>3</sup> or approval of the license agreement pursuant to Pub. Util. Code Section 851.

CalTrans' structure foundation investigation will generally involve the following activities on PG&E property:

- Geotechnical drilling at two sites, with one or two boreholes, approximately four to five inches in diameter and two hundred and fifty feet in depth at each site.
- Minor excavation at each site to support drilling equipment and personnel.

---

<sup>2</sup> G.O. 69-C, adopted July 10, 1985 provides, in relevant part,

“that all public utilities covered by the provisions of Section 851 of the Public Utilities Code [are] authorized to grant easements, licenses or permits for use or occupancy on, over or under any portion of the operative property of said utilities for rights of way, private roads, agricultural purposes, or other limited uses of their several properties without further special authorization by the Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices and service of such public utilities to and for their several patrons or consumers; PROVIDED HOWEVER, that each such grant [to other than a public body] shall be made conditional upon the right of the grantor, either upon order of this Commission or upon its own motion, to commence or resume the use of the property in question whenever, in the interest of its services to its patrons or consumers, it shall appear necessary or desirable to do so.”

<sup>3</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

- Construction and use of a temporary access road, which will necessitate light grading. CalTrans will re-vegetate the road after completion of the project.
- Pumping of water used for the drill sites from Lake Britton and transportation of the water to the drill sites by CalTrans.
- Transportation of wastewater, drill cuttings and drilling tailings to an approved offsite disposal area by CalTrans.
- Seismic reflection testing, which will require temporary installation of signal lines and receivers.

The area on which CalTrans will conduct its structure foundation investigation consists of approximately 1.32 acres.

CalTrans will pay PG&E \$500.00 for the license. The property subject to the license is part of PG&E's non-nuclear, hydroelectric generation-related facilities governed by the Transition Cost Balancing Account (TCBA). PG&E will credit the license revenues to Other Operating Income, consistent with guidelines established for the TCBA.<sup>4</sup>

### **Discussion**

G.O. 69-C provides a narrow exception to Section 851's requirement for advance Commission approval of any sale, lease, assignment, mortgage or encumbrance of utility property. Under G.O. 69-C, utilities may, in certain circumstances, convey limited, revocable uses of utility property, such as easements, licenses, permits or other limited uses of land, to third parties without prior Commission approval.

---

<sup>4</sup> The service provided under the proposed license with CalTrans is an existing service included under T.C.4. in PG&E's Advice Letter 2063-G/1741-E.

G.O. 69-C establishes three key criteria for permitting a utility to grant minor interests in utility property without Commission approval pursuant to Section 851, as follows:

- The interest granted must be for a “limited use” of utility property<sup>5</sup>;
- The interest granted must not interfere with the utility’s operations, practices and service to its customers;
- The interest granted must be revocable either upon the order of the Commission or upon the utility’s own determination that revocation is desirable or necessary to serve its patrons or consumers.<sup>6</sup>

We believe that the proposed license agreement here meets each of these requirements, as discussed below.<sup>7 8</sup>

### **1. Limited Use**

The proposed agreement affects only part of the PG&E Lake

---

<sup>5</sup> G.O. 69-C does not authorize utilities to grant permanent, irrevocable interests in utility property to third parties or to permit permanent, physical changes to utility property by or on behalf of third parties. Our concerns regarding misuse of G.O. 69-C also disfavor the use of “license-to-lease” arrangements, in which the parties negotiate a revocable license under G.O. 69-C with the understanding that the same use of utility property will become irrevocable after Commission approval of the transaction under Section 851. See D.02-10-057.

<sup>6</sup> *Id.*

<sup>7</sup> Since G.O. 69-C applies to this application, we need not address PG&E’s alternate requests for an exemption from Section 851 pursuant to Section 853(b) or for approval pursuant to Section 851.

<sup>8</sup> However, PG&E must comply with any environmental (CEQA) or other requirements related to the use of the property that may have been previously imposed by the Commission or a local agency.

Britton property. CalTrans will not perform any permanent construction on the site, and, upon the expiration or revocation of the license, will restore the property as nearly as possible to its original condition before the structure foundation investigation.

## **2. Non-Interference with PG&E Operations and Practices**

PG&E has represented in the application that CalTrans' activities under the proposed license agreement will not impair or affect PG&E's ability to provide utility service. The proposed license agreement requires CalTrans to submit its work plans to PG&E for advance approval and to conduct the structural foundation investigation in accordance with the work plan as approved by PG&E. CalTrans is also required to conduct its activities in a manner that does not interfere with PG&E's operations and that protects PG&E's property, facilities and human health and safety.

## **3. Revocability**

PG&E may terminate the proposed license agreement at any time upon giving CalTrans 24 hours advance notice. The term of the proposed license agreement is one year.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

## **Assignment of Proceeding**

Geoffrey Brown is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. The proposed agreement is for a "limited use" consistent with G.O. 69-C.

2. The proposed agreement will not interfere with PG&E's operations, practices, or provision of services to its customers.
3. The proposed license agreement is revocable as required by G.O. 69-C.

**Conclusion of Law**

1. The proposed license agreement is authorized by G.O. 69-C, and the requirement for prior Commission approval of the proposed license agreement pursuant to Section 851 does not apply.
2. Since the Commission need not further consider this application, the application should be dismissed.

**O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) may grant a license to the California Department of Transportation (Caltrans) pursuant for a structure foundation investigation on PG&E property, commonly known as Lake Britton, in Shasta County, pursuant to General Order 69-C without prior Commission approval.
2. PG&E shall continue to comply with any environmental (CEQA) or other requirements related to the use of the property that may have been previously imposed by the Commission or a local agency.

3. This application is dismissed.
4. This application is closed.

This order is effective today.

Dated January 16, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners